



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C. 20460

EXTERNAL CIVIL RIGHTS COMPLIANCE OFFICE  
OFFICE OF GENERAL COUNSEL

June 15, 2018

**Return Receipt Requested**

Certified Mail #: 7015 3010 0001 1267 0282

**In Reply Refer to:**

EPA File No.: 16R-17-R4

Mr. Lance R. LeFleur, Director  
Alabama Department of Environmental Management  
1400 Coliseum Boulevard  
Montgomery, Alabama 36130-1463

**Re: Request for Information, EPA File No. 16R-17-R4**

Dear Director LeFleur:

The U.S. Environmental Protection Agency (EPA) External Civil Rights Compliance Office (ECRCO) is requesting information to facilitate the investigation of complaint #16R-17-R4, filed against the Alabama Department of Environmental Management (ADEM). On May 18, 2017, ECRCO accepted for investigation<sup>1</sup> the following issues:

1. Whether ADEM's issuance of the February 10, 2017 operating permit renewal for the Stone's Throw Landfill discriminated against the predominantly African-American residents of the Ashurst Bar/Smith community on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7.
2. Whether ADEM's method of administering its Solid Waste Disposal permitting program subjects the predominantly African-American residents of the Ashurst Bar/Smith community to discrimination on the basis of race in violation of Title VI of the Civil Rights Act of 1964 and EPA's implementing regulation at 40 C.F.R. Part 7.

ECRCO recognizes that ADEM has made information publicly available on its website via the eFile system; however, ECRCO needs additional information in order to investigate the accepted issues. Pursuant to its authority under 40 C.F.R. §7.115, ECRCO requests ADEM to produce the information and documents outlined in the enclosed attachment (Enclosure 1) within thirty (30) calendar days of receipt of this letter. Please produce any other information that ADEM would

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<sup>1</sup> Acceptance of Complaint No. 16R-17-R4 from Lilian Dorka, Director of ECRCO, EPA to Director Lance R. LeFleur, ADEM. (May 18, 2017).

Mr. Lance R. LeFleur

Page 2

like EPA to consider while investigating the issues of this complaint. For your convenience, ADEM may produce electronic versions of the requested responses and documents. Please review and follow the enclosed instructions prior to responding to the questions set forth in Enclosure 1.

After ECRCO's review of the information ADEM produces, ECRCO may request additional information and/or documents, so please preserve all electronic communications and other documents that may be relevant to the investigation. Also, please provide the name and telephone number of the individual who compiled the information in response to this Information Request, and the name and telephone number of the individual to whom ECRCO should direct any future questions.

If you have any questions, please feel free to contact Dale Rhines, ECRCO's Deputy Director at 202-564-4174, by email at [rhines.dale@epa.gov](mailto:rhines.dale@epa.gov) or U.S. mail at U.S. EPA, Office of General Counsel (Mail Code 2310A), 1200 Pennsylvania Avenue, N.W., Washington, D.C., 20460. Thank you in advance for your cooperation.

Sincerely,



Lilian S. Dorka  
Director  
External Civil Rights Compliance Office  
Office of General Counsel

Enclosures: 1 - Questions  
2 - Instructions

cc: Elise Packard  
Assistant General Counsel  
Civil Rights and Finance Law Office

Kenneth Lapierre  
Assistant Regional Administrator  
Deputy Civil Rights Official  
U.S. EPA Region 4

## Enclosure 1

### EPA File No. 16R-17-R4 Information Request to ADEM

Please produce the following information using the instructions included as Enclosure 2. A response must be sent to the EPA within **thirty (30)** calendar days of ADEM's receipt of this request for information letter.

#### The Permitting Process

1. Excluding references to the administrative codes,<sup>1</sup> please produce all related guidance, addendums, or supplements that set forth the requirements for the renewal of a Municipal Solid Waste (MSW) landfill permit.
2. What documents must the owner/operator of a MSW landfill submit to ADEM in support of a permit renewal?
3. Please describe the MSW permit renewal review process. Are there reports prepared by or submitted to ADEM, or analysis that ADEM conducts in advance of issuance of an MSW permit renewal?
4. Are Host Agreements (i.e., between local jurisdictions and landfill owners/operators) evaluated during the MSW landfill permitting process? Are they reevaluated during review of an MSW permit renewal application? What actions can ADEM take if ADEM becomes aware that terms of a local Host Agreement are not being implemented, or are possibly being violated?
5. During the period between November 29, 2011 through December 17, 2016<sup>2</sup> has ADEM repealed a variance or denied a variance request, or denied a permit renewal to an MSW landfill applicant either in part or in whole because of concerns and objections by members of the surrounding community? If so please state the name and address of the landfill involved, the date of the decision, the nature of concern or objection expressed by the public and the nature of ADEM's response. Please produce copies of any related documentation, if any.
6. How does ADEM determine the adequacy of the materials proposed to be used in a requested operational variance (e.g., alternative daily cover, liner, etc.)? How does ADEM determine that such materials are utilized appropriately?

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<sup>1</sup> ADEM Admin. Code r. 335-13-5-.02 Permit Application and ADEM Admin. Code r. 335-13-4-.12 Plans and Operational Reports.

<sup>2</sup> This is the period for which Tallassee Waste Disposal Center, Inc. permit #62-11 was authorized.

7. How does ADEM determine the acceptability of a design variance request by a MSW landfill?
8. How does ADEM consider and address concerns and issues raised in public comments for a MSW permit renewal application?

### The Inspection Process

In response to concerns expressed by members of the public about the impact of the Stone's Throw Landfill, in a document dated February 10, 2017,<sup>3</sup> ADEM cited its commitment to quarterly inspections "to ensure compliance with terms and conditions of the permit." ADEM also stated its intention to conduct "at least quarterly" inspections in response to residents' concerns about odor and disease vectors, the overflow of sediment onto adjacent properties and alleged negative health impacts attributed to the landfill.

9. Is there a Standard Operating Procedures document followed by MSW landfill inspectors conducting inspections governed by ADEM Administrative Code 335-13-6-.01? If so, please produce a copy.
10. What is ADEM's process for assigning inspectors to monitor MSW landfills? What is ADEM's process for reviewing and approving completed inspection reports?
11. During what hours are MSW landfill inspections conducted? If ADEM receives complaints about activities occurring after Stone's Throw Landfill's permitted operating hours, how does ADEM address those complaints? Are inspections conducted after hours?
12. Please describe how ADEM determines when to issue a violation or apply financial penalties for a single or a repeated noncompliance issue or operating violation. Please describe a permittee's appeal process for decisions of this nature.
13. Has Stone's Throw Landfill received any NOV's or financial penalties within the past 3 years? If so, please explain the circumstances leading to either an NOV or financial penalty within that timeframe, and produce any additional documentation relating to these. Also, if applicable, please note whether Stone's Throw Landfill has appealed any of these, and produce any related documentation.

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<sup>3</sup> See ADEM eFile, 14950\_62-11\_123\_20170210\_CORR\_Response\_to\_Public\_Comments.pdf, available at <http://app.adem.alabama.gov/eFile/>

14. ADEM's eFile system contains ADEM memos dated November 8, 2016<sup>4</sup> and November 9, 2016<sup>5</sup> that a particular ADEM staff member had taken a "tour" of the Stone's Throw Landfill on October 25, 2016 and November 1, 2016. Why did these two "tours" occur so close in time to the quarterly inspection done on Sept. 23, 2016, and what was their outcome? Please produce any additional documentation relating to these two events.
15. Has ADEM conducted any confirmation sampling of the Stone's Throw Landfill's ground or surface waters? Has anyone requested or recommended that ADEM test local drinking water sources, public and private water systems; surface water; or, storm water discharges in the area of the Stone's Throw Landfill? If so, please produce copies of such requests and a description of ADEM's actions and test results in response to the complaints and/or requests. Since May 2016, has ADEM independently undertaken any of the above testing? If so, please produce copies of the test results.

#### The Environmental Complaint Process

16. Outside of the designated permit renewal public comment periods for the Stone's Throw Landfill, has ADEM received any public complaints or correspondences within the last two (2) years for permit #62-11? If so, how did ADEM respond to these? Please produce any additional documentation relating to these complaints or correspondence.
17. In September 2017, ADEM provided to ECRCO, in response to a different case, Standard Operating Procedures #9303, adopted by ADEM on December 6, 2011, which sets forth procedures for processing environmental complaints. Has this SOP been amended, replaced or rescinded? If amended or replaced, please provide a copy of the language currently in effect. If rescinded, please advise us as to the date of and reason for the rescission.

#### Implementation of Grievance Procedure

18. Please produce, excluding employment discrimination complaints, copies of any race, color, national origin, age, sex and disability discrimination complaints filed since February 10, 2017, through ADEM's nondiscrimination grievance procedures related to the Stone's Throw Landfill and/or by the residents of the Ashurst Bar/Smith community, and ADEM's subsequent response to those complaints.

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<sup>4</sup> See ADEM eFile, 14950\_62-11\_123\_20161108\_SWMR\_Trip\_Memo.pdf, available at <http://app.adem.alabama.gov/eFile/>

<sup>5</sup> See ADEM eFile, 14950\_62-11\_123\_20161109\_SWMR\_Trip\_Memo.pdf, available at <http://app.adem.alabama.gov/eFile/>

Enclosure 2  
INFORMATION REQUEST  
INSTRUCTIONS

Each of the following instructions applies to each and every question contained in the letter.

1. ADEM must produce a written response to each request for information, even if such a response is a statement reflecting that no responsive information or documents exist. Each response should be preceded by the number and content of the question being answered.
2. If ADEM's response to a question requires a scanned or hardcopy document, ADEM must identify the filename or document title (by name, and if applicable, eFile number). Make sure to correlate any hardcopy or scanned documents to a specific question. If a document is responsive to more than one question, this must be so indicated and only one copy of the document needs to be produced.
3. ADEM may choose to either submit documents in .pdf format or as hardcopy documents. However, electronic submissions are preferred. Should ADEM choose to produce .pdf electronic documents, do not create separate .pdf files for each page of a single document. Files publicly available online must be downloaded and submitted either in .pdf format or in hard copy. Files submitted must be those utilized in ADEM's decision-making process, not later drafts.
4. Identify each person whom ADEM relied on or consulted with in preparing its responses to each question of this information request. Produce the individuals' names, titles, job duties and duration of employment with ADEM. If they are not an employee of ADEM, identify their employer and produce their names, title, job duties and duration of employment with their employer.
5. Identify (by name, and if applicable, eFile number) each document consulted, examined, or referred to in the preparation of ADEM's response or that contains information responsive to the question, and produce a true and correct copy of each such document if not already being produced in response to another specific question. Indicate on each document produced in response to this information request the number of the question to which it corresponds.
6. If requested information or documents are not known or are not available to ADEM at the time of ADEM's response to this information request, but later becomes known or available to ADEM, ADEM must supplement ADEM's response to the EPA within thirty (30) **calendar days** of discovery of the responsive information. Moreover, should ADEM find at any time after submission of ADEM's response that any portion is or becomes false, incomplete or misrepresents the facts, ADEM must produce the EPA with a corrected response as soon as possible.
7. Produce a separate response to each and every question, and each and every subpart of a question.